

Testing cargo containers. An organization whose activities include the inspection, testing, and safety certification of cargo shipping containers and research, development, and reporting of information in the field of containerization is not operated exclusively for the purpose of testing for public safety or for scientific purposes; Rev. Rul. 65-61 distinguished.

Advice has been requested whether the nonprofit organization described below, which otherwise qualifies for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, is operated exclusively for the purpose of testing for public safety or for scientific purposes.

The organization inspects, tests, and certifies for safety shipping containers used in the international and domestic transport of cargo by ship, rail, and motor vehicle.

The containers are tested against voluntary standards issued by a federal agency. The federal agency has been designated by Executive Order to implement international conventions on container safety. One such convention was entered into to formalize common international structural requirements to ensure safety of human life in the handling, stacking, and transporting of containers in the course of normal international operations, and to facilitate international container transport. Although containers may be marketed and used in international operations without having been tested and certified by the organization, containers lacking certification may be delayed, unnecessarily opened, or even refused entrance into ports of signatories of the convention.

In addition, the organization's activities include research, development, and reporting of information in the field of containerization.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for scientific or testing for public safety purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for any of the purposes specified in section 501(c)(3) of the Code unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(4) of the regulations states that the term 'testing for public safety,' as used in section 501(c)(3) of the Code, includes the testing of consumer products, such as electrical products, to determine whether they are safe for use by the general public.

Section 1.501(c)(3)-1(d)(5)(i) of the regulations provides

that since an organization may meet the requirements of section 501(c)(3) of the Code only if it serves a public rather than a private interest, a 'scientific' organization must be organized and operated in the public interest.

Section 1.501(c)(3)-1(d)(5)(ii) of the regulations provides that scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc.

Rev. Rul. 68-373, 1968-2 C.B. 206, holds that an organization engaged in the clinical testing of drugs for safety and efficacy in order to enable their manufacturers to meet federal requirements for marketing is not 'testing for public safety,' but is merely performing a service for the commercial pharmaceutical companies that manufacture the drugs. Such testing principally serves the private interest of the manufacturers rather than the public interest.

While shipping containers can be marketed without compliance with the safety standards set out by the federal agency, their usefulness to manufacturers and shippers in international trade is greatly diminished without the safety certification of this organization. As in Rev. Rul. 68-373, the testing and certification serve the private interests of container and other manufacturers and shippers by facilitating their operations in international commerce, and only incidentally serve the public interest.

In addition, the safety and efficiency of shipping containers are closely allied to successful commercial operations, since manufacturers and shippers must protect themselves against losses due to spoilage, leakage, delays in transit, and employee injuries. Thus, the organization's testing and research activities are of a type ordinarily carried on as an incident to commercial or industrial operations, and, therefore, do not constitute scientific research within the meaning of section 1.501(c)(3)-1(d)(5) of the regulations.

Nor do the testing and certification activities of the organization constitute the testing of consumer products to determine whether they are safe for use by the general public. An unsafe container in the flow of commerce may affect the general public only incidentally. The safety standards tested for here are aimed primarily at the protection of employees of shippers and other persons closely associated with the handling of containers in the normal course of commerce.

Accordingly, the organization is not operated exclusively for the purpose of testing for public safety, or for scientific purposes, and thus is not exempt from federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 65-61, 1965-1 C.B. 234, which holds that an organization formed to test for public safety by establishing safety standards for products used aboard pleasure boats is exempt under section 501(c)(3) of the Code is distinguishable, because the products tested by the organization herein described are containers used by shippers in their business activities and are not consumer products used by the general public.

Rev. Rul 65-61 is distinguished.